

MORRISON | FOERSTER1290 AVENUE OF THE AMERICAS
NEW YORK, NY 10104-0050TELEPHONE: 212.468.8000
FACSIMILE: 212.468.7900

WWW.MOFO.COM

MORRISON & FOERSTER LLP
NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SAN DIEGO, WASHINGTON, D.C.
NORTHERN VIRGINIA,
ORANGE COUNTY, DENVER,
SACRAMENTO, WALNUT CREEK
TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

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Writer's Direct Contact

212.468.8009

MBMiller@mofo.com

Hon. Leonard D. Wexler
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722Re: *Li v. Apple Inc., et al.*, Case No. CF-07-04005 (LDW)(ETB)

Dear Judge Wexler:

We represent defendants Apple Inc. and Steve Jobs (collectively "Apple") in the above-captioned action. On December 5, 2007, we wrote to the Court pursuant to your Honor's Individual Practices, requesting a pre-motion conference seeking leave to file a motion to dismiss under Rule 12(b)(6) of all claims against Apple. A copy of Apple's letter is attached. A similar letter was sent by co-defendant AT&T. As your Honor is aware, under Rule 2.B of the Individual Practices, those letters "constitute timely service of a motion made pursuant to Federal Rule of Civil Procedure Rule 12(b)."

The plaintiff in this action did not file a response to those letters, as your Honor's Individual Practices require. Nor has the plaintiff ever responded to numerous phone messages and letters sent on behalf of the defendants in order to satisfy our meet and confer obligations pursuant to Magistrate Judge Boyle's order and the Federal Rules.

Instead, I received by fax a few hours ago a letter from plaintiff's counsel threatening to take defendants' default for failure to "serve an answer." When I phoned plaintiff's counsel 22 minutes after receiving the fax, I was told that she was unavailable and unreachable.

Apple's motion to dismiss would seek dismissal of the entire Complaint and, for the avoidance of doubt, Apple generally denies the allegations of the Complaint, its causes of action, and its claims for relief. Apple respectfully seeks a conference to set a briefing schedule for Apple's motion to dismiss notwithstanding plaintiff's failure to respond to defendants' pre-motion letters.

Respectfully submitted,

/s/ Michael B Miller

Michael B. Miller

ny-792648

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(Encl.)

cc: All Counsel (Via ECF)